IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 139 of 1994

with

CRIMINAL APPEAL No 194 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL
and
Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHIKHABAHI VASAVA
Versus
STATE OF GUJARAT

Appearance:
1. Criminal Appeal No. 139 of 1994
MR KR RAVAL for Appellant
MR HL JANI, APP for Respondent No. 1
2. Criminal Appeal No. 194 of 1994
MR KR RAVAL for Appellant
MR HL JANI, APP for Respondent No. 1

CORAM : MR.JUSTICE M.C.PATEL

and

MR.JUSTICE A.L.DAVE

Date of decision: 04/04/2002

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE M.C.PATEL)

1. The appellant in Criminal Appeal No.139 of 1994 was the accused no.2 and the appellant in Criminal Appeal No.194 of 1994 was the accused no.4 in Sessions Case No.106 of 1992 before the Additional Sessions Judge, Bharuch who, by his judgment and order dated 19th January, 1994, convicted the accused no.2 of the offence under Section 302 of the I.P.C. for causing the death of Ranchhodbhai Suryabhai and convicted the accused no.4 of the offence under Section 302 for causing the death of Ranchhodbhai Suryabhai and Kanchan Viththalbhai and sentenced each of them to a life term and to pay a fine of Rs.1,000/-, in default, to undergo R.I. for six months.

2. The charge was that the appellants and three other persons, who were arraigned as accused no.1, 3 and 5, formed an unlawful assembly and called deceased Ranchhodbhai to their house and made an assault on him with lethal weapons and caused his death and also assaulted Kanchanbhai who intervened to save Ranchhodbhai and caused his death. It was also alleged that they had caused injuries to Somjibhai Ranchhodbhai, Kaliben Somji and Mana Viththal. The incident in question occurred at about 8 o'clock at night on 21st March, 1992 in village Avidhya, Taluka Jhagadiya, District Bharuch. They were charged with the offences punishable under Sections 143, 147, 148 and 302 read with Section 149 and the offence punishable under Section 324 read with Section 149. The learned Additional Sessions Judge, at the end of the trial, found the accused no.2 and accused no.4 guilty of the offence as stated earlier and acquitted accused no.1, 3 and 5 of the offences charged to them and also acquitted all the accused of the offence punishable under Section 324.

3. The accused no.2 and 4 have, therefore, filed these appeals challenging their conviction. The State has not filed any appeal against the order of acquittal.

4. It is not in dispute that Ranchhodbhai and Kanchanbhai sustained fatal injuries on 21st March, 1992. The medical evidence shows that deceased Ranchhodbhai had a number of injuries on his chest and one incised wound

over the parietal region. Dr. Jitendra Rathod who carried out the post-mortem in the morning of 22nd March, 1992 stated that the cause of death was shock due to profuse haemorrhage in the pleural cavities due to injury of the lungs. Dr. Vaisakhi Dave who performed the post-mortem of deceased Kanchan on 23rd March, 1992 stated that there was one incised wound in the middle of the top of the head from front backwards and the cause of death was subdural and sub-arachnoid haemorrhage following head injury.

5. The question is, therefore, whether it was the accused no.2 and 4 who were responsible for causing the fatal injuries.

6. The prosecution case rested on the evidence of four eye-witnesses.

7. The first eye-witness is Somjibhai Ranchhodbhai (P.W.2). He is the son of deceased Ranchhodbhai. According to him, the incident occurred at about 8 o'clock at night opposite the house of the accused which was opposite their house. At that time, he, his wife and his father Ranchhod were in the house. They were about to start their meal. At that time, the accused no.2 came to their house and called Ranchhod to his house. Ranchhodbhai, therefore, followed him to his house. Then, he treacherously killed him. Viththal's son started shouting that his maternal uncle had been killed. He and his wife, therefore came out. When he arrived, his father had been killed. The accused no.2, his two sons, whose names he did not know, and accused no.4 were there. He saw these four persons. They were entering their house. The accused no.4 gave a farshi blow to his father. The accused no.2 gave a dharia blow. Accused no.5 was not there. Since they went there, they were also beaten. The accused no.4 gave him an axe blow and the blade of the axe came off. Then the accused no.4 ran away. His wife was hit with a stone by accused no.1. The younger son of accused no.2 gave a stick blow to Manilal Viththal in the leg and on the hands. The accused no.4 also gave a farshi blow on the head of the boy who was shouting. Then, they went to the village to make a telephone call to the police station. The police came after they made a telephone call and his complaint was recorded.

8. He stated that somebody had knocked over the can of alcohol wash of accused no.2 and his father had been suspected. Hence, his father had been killed. Kanchanbhai who was injured was taken to the hospital at

Jhagadiya from where he was taken to Bharuch and from there he was taken to Vadodara and he died in Vadodara hospital.

9. The second witness is Kaliben Somji (P.W.6), wife of the first witness Somji and daughter-in-law of deceased Ranchhodbhai. According to her, the incident occurred at about 7 o'clock in the evening near the door of the house of accused no.2. She was in the house with her husband, her daughters and her son. The accused no.2 came and fetched her father-in-law. Then her father-in-law was beaten. Her brother Kanchan started shouting that he had been killed. Hence, she and her husband came out of the house. They saw that her father-in-law had been struck down and the boy also had been struck down by accused no.4. The accused no.3 gave a blow to Kanchan and hence, he fell down. The accused no.4 gave a farshi blow on the head of Kanchan. They saw four persons namely, the accused no.1 to accused no.4. All the accused were beating her father-in-law. The accused no.2 was armed with a Dharia, accused no.4 with a farshi, accused no.3 with a gayda and accused no.1 with a dang. The accused no.4 gave a farshi blow to her father-in-law and struck him down. The accused no.2 gave a Dharia blow. When they came out, beating was continuing. The accused no.1 hit her in the leg with a stone. Her father-in-law had died and Kanchan was taken to hospital.

10. In cross-examination, she stated that when they came out, her father-in-law was already injured and was lying on the ground. Kanchan too had an injury on the head and he had fallen down.

11. The third witness was Viththalbhai Naranbhai (P.W.7), the father of deceased Kanchan. According to him, the incident occurred at about 8 o'clock near the house of accused no.2. His house is nearby. He was sitting on the otla of his house. His son Kanchan had gone to fetch bidis. He was coming back when Ranchhodbhai was being beaten. His son shouted that Ranchhod had been killed and hence his son too was struck down. His another son Mana ran there and the accused no.1 to 4 ran into their house. The accused no.2 gave a Dharia blow to Ranchhod on the back. The accused no.3 gave a gayda blow to Ranchhod. The accused no.4 gave an axe blow on the back of Ranchhod. The accused no.3 gave a gayda blow to his son Kanchan and accused no.4 gave an axe blow on his head. His son fell down. Budhiya gave an axe blow on the hand of Mana. No one else was injured.

12. The last alleged eye-witness was Manabhai Viththalbhai (P.W.8) who was the brother of Kanchan. According to him, at the time of the incident, he was in his house. He heard the cry of his brother Kanchan that he was being killed. He ran there. He saw that Kanchan was lying on the ground and his uncle Ranchhodbhai was also lying down. Four persons were involved in the beating namely, the accused no.1 to 4. They were beating his brother and his uncle. The accused no.4 gave an axe blow to his brother Kanchan on the head. The accused no.2 gave a Dharia blow on the back of his uncle. The accused no.4 gave an axe blow on the right shoulder. Then, the accused no.1 ran away. In his cross-examination, he stated that when he came out of the house, Ranchhod and Kanchan were on the ground and were bleeding.

13. The learned Additional Sessions Judge recorded the finding that there was no evidence against accused no.5 and his presence was not proved. He, therefore, came to the conclusion that there was no unlawful assembly. He also recorded the finding that the prosecution had failed to prove the charge of injury to witness Somji, Kaliben and Viththalbhai and acquitted the accused of the offence under Section 324. He also found that the charge against accused no.1 and 3 was not satisfactorily proved and hence, they too were acquitted. As stated earlier, there is no appeal against the order of acquittal. Now, the above evidence of the four alleged eye-witnesses, which has been set out above, shows that all of them had arrived at the spot after Ranchhodbhai and Kanchan had received injuries and they had fallen down. The testimony of the witnesses is inconsistent as to weapons allegedly used by different accused. The prosecution has failed to prove the case that these three witnesses too had been injured.

14. We have closely read the evidence of these four witnesses in original and we find that it is so inconsistent and discrepant that it is not possible to determine who out of the four accused had given which blow to whom. Accused no.1 and 3 have already been acquitted and there is no appeal against their acquittal. On reading their evidence, we do not feel satisfied that they had seen the actual incident. On the contrary, we are satisfied that they had arrived on the spot after the incident was over and that is why the discrepancies and inconsistencies in their evidence. In the circumstances, a grave doubt arises as to whether the fatal blows had been inflicted by accused no.2 and 4 and the benefit of

this doubt must go to them. Both the appeals are, therefore, allowed and the order of conviction and sentence of appellant Bhikhabhai Dhurabhai Vasava in Criminal Appeal No.139 of 1994 and Budhiyabhai Mohanbhai Vasava in Criminal Appeal No.194 of 1994 for the offence under Section 302, passed by Additional Sessions Judge, Bharuch on 19th January, 1994 in Sessions Case No.106 of 1992 is hereby set aside. The appellants are acquitted of the charge levelled against them. They shall be set at liberty forthwith, if not required in any other case.

(M.C. Patel, J.)

(A.L. Dave, J.)

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